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**Subject:** Electronic Filing / Docket 110009-EI  
**Attachments:** Florida Power & Light Company's Revised Prehearing Statement Position on Issues 15A and 15B.pdf

**Electronic Filing**

a. Person responsible for this electronic filing:

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b. Docket No. 110009-EI

IN RE: Nuclear Power Plant Cost Recovery Clause

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of six (6) pages.

e. The document attached for electronic filing is: *Florida Power & Light Company's Revised Prehearing Statement Position on Issues 15A and 15B*

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Power Plant )  
Cost Recovery Clause )

Docket No. 110009-EI  
Filed: July 28, 2011

**FLORIDA POWER & LIGHT COMPANY'S  
REVISED PREHEARING STATEMENT POSITION ON ISSUES 15A AND 15B**

Florida Power & Light Company ("FPL" or the "Company"), pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code, hereby files with the Florida Public Service Commission ("FPSC" or the "Commission") a Revised Prehearing Statement Position on Issues 15A and 15B.

**Issue 15A: Did FPL willfully withhold information concerning the estimated capital costs of its EPU project and its related long-term study of the feasibility of the EPU project that is required by Rule 25-6.0423, F.A.C., and that the Commission needed to make an informed decision at the time of the September 2009 hearing in Docket No. 090009-EI?**

FPL: No. As testified to by Armando Olivera, FPL's President and Chief Executive Officer, "FPL did not willfully withhold information that the Commission needed to make an informed decision during the September 2009 hearing in Docket No. 090009-EI."

FPL is required by Rule 25-6.0423 to provide information related to the prior year's actual nuclear project costs in March of each year, and an estimate of the current year and next year's projected costs in May of each year. FPL is also required to provide a feasibility analysis in May of each year. FPL fully complied with these obligations, presenting the best information it had available at the time of these filings and at the September 2009 hearing. Further, FPL fails to see any significance in the fact that an FPL witness was unaware of a sensitivity analysis that continued to show the EPU project as cost effective, a conclusion that was consistent with the analysis and testimony the witness presented to the Commission.

As to OPC's assertion that FPL had an obligation to update its testimony in September 2009, the testimony of FPL Witnesses Mr. Olivera, FPL's former Chief Nuclear Officer Mr. Stall, EPU Vice President Mr. Jones, as well as the deposition testimony of former EPU Vice President Mr. Kundalkar clearly show that the information OPC claims should have been provided was preliminary, unreliable, and incomplete. FPL simply did not have the information necessary to support a reliable update to its non-binding cost estimate in September 2009. Moreover, there

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is no obligation to provide this type of information as an update to testimony, as OPC seems to assert.

OPC's position lacks perspective. This is *not* a case where senior management had approved a new cost estimate but decided to not to submit it. Over the course of the year, between the time of FPL's May filing and the Commission's September Nuclear Cost Recovery hearing, FPL continued to manage and execute the EPU project. FPL was provided with information from its EPC vendor indicating the need for staffing in the later years of the project at levels greater than had been previously estimated. This preliminary information was utilized by project controls personnel to create a project cost forecast, which was presented to the Executive Steering Committee on July 25, 2009.

Neither the vendor estimates nor the resulting cost forecast, however, had been accepted or approved by senior management. To the contrary – the Executive Steering Committee rejected that information, determining it was inaccurate and unreliable. The forecast did not capture additional reductions to the EPC vendor's estimates that the Executive Steering Committee thought could be achieved – and were in fact achieved – by the end of the year. In other words, had the Commission been presented the “snapshot” of information that was presented internally in July 2009, it would have been proven inaccurate by December 2009. Additionally, the July 25, 2009 forecast failed to account for other cost reduction opportunities that existed at the time – including the opportunity to self-perform some or all of the EPC work and the opportunity to hire an additional EPC vendor to perform a portion of the EPC work – all of which was being actively considered by senior management in the third and fourth quarters of 2009 and none of which was reflected in the July 25, 2009 project controls forecast. As explained by FPL Witness Stall, major factors affecting the EPU total project cost estimate were in a state of flux in September of 2009. It is clear that FPL was not in a position to revise its non-binding cost estimate at that time. In fact, had FPL presented this information at the 2009 hearing, it would have been contrary to FPL's process to ensure the disclosure of accurate and reliable information to external stakeholders, including the Commission.

The Commission did not need this unreliable information to make informed decisions in the 2009 docket. The 2009 NCR docket examined 2008 costs for prudence, 2009 and 2010 costs for reasonableness, and project feasibility. The information OPC claims should have been provided had *no* effect on the 2008, 2009, or 2010 costs that the Commission was reviewing. With respect to project feasibility, FPL performed a sensitivity analysis in July 2009 to examine the impacts of potential cost increases as well as potential unit output increases, and to determine whether the project would still be cost-effective for customers using these assumptions. The sensitivity analysis demonstrated that, even assuming higher costs *without* the potential for increased output, the EPU project remained solidly cost-effective for FPL's customers. As a result, even if FPL had provided this information as some sort of “update” to its testimony, it would have provided

no basis for a change to any of the Commission's decisions. (Olivera, Stall, Jones, Sim)

**Issue 15B: If the answer is yes, does the Commission possess statutory and regulatory authority with which to address FPL's withholding of information?**

FPL: As explained above, the answer to 15A is "no". FPL did not withhold information that the Commission needed to make an informed decision. Nonetheless, parties appear to be in disagreement as to whether FPL should have considered providing this information as some sort of an "update" at some point to the Commission.

The Commission's authority under State law to assess penalties against utilities is expressly limited to circumstances in which a utility has refused to comply with or willfully violated a lawful rule or order of the Commission, or a statute administered by the Commission. *See*, Section 366.095, F.S.; *see also* Section 350.127(1), F.S. FPL has fully complied with all applicable rules, orders, and statutes, including the Nuclear Cost Recovery Rule. That Rule requires FPL to file in May of each year a feasibility analysis as well as its nonbinding cost estimate, which FPL did. The management-vetted and approved estimate was the best information.

The terms of the Nuclear Cost Recovery Rule are clear. Nothing further is required than what the Company provided and OPC's contentions to the contrary are unfounded. The rule requires FPL annually to provide both budgeted and actual costs compared to the estimated in-service costs of the power plant as provided in the petition for need determination, or the revised estimated in-service costs. It is axiomatic that "budgets" are established by management. OPC should not be surprised, therefore, that FPL would insist that the in-service cost estimate be revised only upon review and acceptance by senior management. In this case, senior management reviewed and explicitly *rejected* the information that OPC contends FPL was required to disclose in September of 2009.

Reasonable minds may differ as to whether FPL or Mr. Kundalkar should have advised the Commission of the Bechtel-based figures that were being discussed by Senior Management (John Reed Direct Testimony at p. 47), whether FPL missed an "opportunity" to inform the Commission about cost estimates that were not fully vetted (Internal Controls Audit Staff report at p. 35), or whether, for reasons discussed by FPL witnesses Olivera, Stall, and Jones FPL properly concluded that the numbers were not yet reliable and that extensive negotiations needed to occur with Bechtel before revising its non-binding estimate (See e.g., Direct Testimony of Art Stall at pp. 4-5). FPL's decision reflected care and deliberation in assessment of cost information and management of the project for the benefit of its customers. FPL submits that such actions are what the Commission would expect of the Company – as opposed to unquestioning acceptance of vendor information – and is not behavior that should be penalized. But regardless of one's view on these points,

there is no basis to conclude that FPL's decision constituted a willful violation of Rule 25-6.0423, F.A.C.

Of course, to the extent the Commission or Staff would like more frequent reporting of project information (in addition to the annual reporting provided for by Rule 25-6.0423 and the constant reporting provided through the discovery process), the Commission has the statutory authority to revise the NCRC rule, Rule 25-6.0423, or impose other reporting obligations on a going-forward basis. FPL has indicated through responses to discovery its willingness to participate in such a dialogue.  
(Legal)

Respectfully submitted this 28<sup>th</sup> of July, 2011.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 110009-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's Revised Prehearing Statement Positions on Issues 15A and 15B was served electronically and by U.S. Mail this 28th day of July 2011, to the following:

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